

Appl. No. : 10/735,481
Filed : December 12, 2003

REMARKS

Claims 6, 31, 33, 35, 41 and 47 are withdrawn. Claims 2, 37, 39, 41, 43, 45 and 47 are under consideration. Applicant understands that upon allowance of the peptide claims, the method claims 31-35 may be considered for rejoinder. Claims 4, 39, and 45 have been cancelled without prejudice. Claim 2 has been amended. Support for the amendment can be found in the Specification as filed, for example, on page 12 in Example 4, wherein synthetically prepared peptide of SEQ ID NOs 2 and 3 were prepared and tested for antimicrobial effects. The following addresses the substance of the Office Action.

Specification

The Examiner has objected to the Specification because Figure 3 and Figure 5 do not correlate to the brief description. Applicant has amended the Brief descriptions of figures 2-5 by adding descriptions of the bars of each shading. Support for the amendment can be found in the Specification as filed, in paragraphs [0080]-[0083]. Therefore, no new matter has been introduced by these amendments.

Claim Objections

The Examiner has objected to Claim 1 for reciting acronym DCD without its explanation. Applicant understands that the Examiner meant Claim 2, as Claim 1 has been canceled. Claim 2 has now been amended to recite "dermicidin" before the acronym "DCD".

Novelty

The Examiner has maintained the rejection of Claims 2, 4, 37, 39, 43 and 45 under 35 USC §102(b) as being allegedly anticipated by Akerblom et al. (USP 5,834,192).

To be anticipatory under 35 U.S.C. § 102, a reference must teach each and every element of the claimed invention. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379 (Fed. Cir. 1986). "Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. ...There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991).

Akerblom et al. describe an HCAP protein, 110 aa long, suggested to be involved in cancer-induced cachexia. Akerblom et al. does not disclose an isolated antimicrobially active peptide comprising amino acid residues 63-110 (SEQ ID NO: 2) of a dermicidin (DCD) protein substantially in isolation from sequences naturally occurring adjacent thereto in the dermicidin

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protein. Therefore, Akerblom et al. does not anticipate currently amended Claims 2, 37, 43 and new claim 48, and the rejection of these claims under 35 USC §102(b) should be withdrawn.

For all of the above reasons, Applicants respectfully request withdrawal of all rejections under 35 U.S.C. § 102, and allowance of the pending application.

CONCLUSION

Applicants have endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. Accordingly, amendments to the claims, the reasons therefor, and arguments in support of the patentability of the pending claim set are presented above. In light of the above amendments and remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully requested to initiate the same with the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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